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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,991	08/26/2003	John Moenning	7432-0046	2487

31425 7590 01/03/2007  
INDIANO VAUGHAN LLP  
ONE N. PENNSYLVANIA STREET  
SUITE 850  
INDIANAPOLIS, IN 46204

EXAMINER
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ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/03/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/647,991

Applicant(s)

MOENNING ET AL.

Examiner

Shumaya B. Ali

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5,6,10-30 and 32-41 is/are pending in the application.
- 4a) Of the above claim(s) 12-20,22,23,28,29,32 and 33 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,5,10,11,24,26,27,30,34-37 and 41 is/are allowed.
- 6) ☒ Claim(s) 6,21,25,38 and 40 is/are rejected.
- 7) ☒ Claim(s) 39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

In response to the office action mailed on 1/25/2006, the applicant has amended claims 1,21,24,25,30, and 36-39; claims 3,4,7-9,12, and 31 are cancelled; new claims 40 and 41 are entered; claims 13-18,20,22-23,28,29,32, and 33 are withdrawn. Currently claims 1,2,5,6,10,11,19,21,24-27,30,34-41 are pending in the instant application.

### *Response to Arguments*

Applicant's arguments with respect to the previously rejected claims, see office action dated 1/25/06 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6,21,25, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 6, claim 6 recites the limitation "the lower edge" in line 2. There is insufficient antecedent basis for this limitation in the claim

Regarding claim 21, the language of "an inspiratory gas port the dome portion" in line 12 and "inspiratory gas port to place the patient end" in line 21 is unclear. In addition, claim 21 recites the limitation of "the exhaust port" in line 25; there is insufficient antecedent basis for this limitation in the claim.

Regarding claim 25, the language of "positioned within the naris of the patient the cushion member is a bladder" in line 5 is unclear. In addition, claim 25 recites the limitation of "the eye shield" in line 7; there is insufficient antecedent basis for this limitation in the claim.

Regarding claim 40, the language of "snugly receive the flexible cannula **relative** to the face mask" in line 2 is indefinite. The metes and bounds of "relative" is unclear.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blasdel et al. US Patent 4,265,239 in view of Ho et al. US Patent 6,805,117.**

**Regarding claim 38**, Blasdell discloses an anesthesia delivery device capable of being coupled to a ventilation system having an inspiratory gas input for delivering gas to a patient and an exhaust gas output for delivering gas from the patient to the ventilation system (fig.21, 142), the anesthesia delivery device comprising: an inspiratory gas line (fig.14, 48) having a machine end and a patient end portion (see fig.14) and the machine end being capable of being fluidly coupled to the inspiratory gas input of the ventilation system (see fig.14), and with respect to the language of “the patient end portion being configured for being received within the naris of the patient for delivering inspiratory gas to the nasis of the patient”, Blasdell does not explicitly teach “within the naris of the patient”, however if the device of Blasdell were to used on a child and/or infant, then the patient end portion would be capable of being received within the naris of the patient. Blasdell further discloses a face mask (fig.21, 20) comprising a dome portion (fig.14, the curved portion of 20 configured to sit over the nose of a user) sized to cover the patient’s nose without covering the patient’s mouth, the dome portion defining an inside air space between the patient’s nose and the dome portion (see fig.14, 20), and the dome construction of the mask inherently have an outside air space exterior of the dome portion (see fig.14), a vent (fig.16, 132) for allowing gas to pass between the inside air space and the outside air space, an exhaust port (fig.16, 138) capable of being fluidly coupled to the exhaust gas output of the ventilation system for allowing gas to pass from the inside air space to the exhaust gas output of the ventilation system, the exhaust port including an elbow (fig.15, 122) and

an exhaust line (fig.15, 138) having a machine end and a patient end, the patient end being connected to the elbow of the exhaust port for scavenging gases from the inside air space of the dome portion. The language of wherein the exhaust port and vent are capable of cooperatively exerting a negative pressure on the outside air space adjacent to the face mask for preventing inspiratory gases from entering the outside air space adjacent to the face mask is considered an expected result of using an exhaust system in a gas rebreathing circuit. Furthermore, an exhaust system is capable of scavenging gas leakage, i.e. from the mask, thereby can create a negative pressure within the inside airspace of the mask in order to provide a facial seal. **Blasdell however does not disclose the exhaust line being positioned by the elbow to extend over the forehead of the patient.** However, Ho in figure 3 teaches a conduit extending upwardly from the mask and above the head of a patient for stability, i.e., to prevent the conduit from tugging on the mask and possibly dislodging it, and to prevent the conduit from interfering with the patient or the patient's bed partner (see col. 5 lines 3-9). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Blasdell with an exhaust line that extend over the forehead of the patient for the purposes of preventing the line from tugging on the mask and possibly dislodging it, and preventing the line from interfering with the patient or the patient's bed partner as taught by Ho.

*Allowable Subject Matter*

Claims 1,2,5,6,10,11,24, 26,27,30,34-37, and 41 are allowable over the prior art of record.

Claim 39 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,474,060, US 5,185,005, US 2,843,122, US 5,538,000, US 5,261,398, US 5,400,781, US 5,752,511, and US 4,821,715 are cited to teach nasal cannula and patient exhaust system.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and

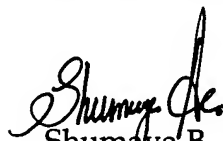
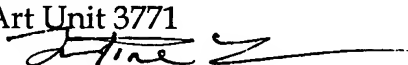
Art Unit: 3771

any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-W-F 8:30am-5:00 pm.

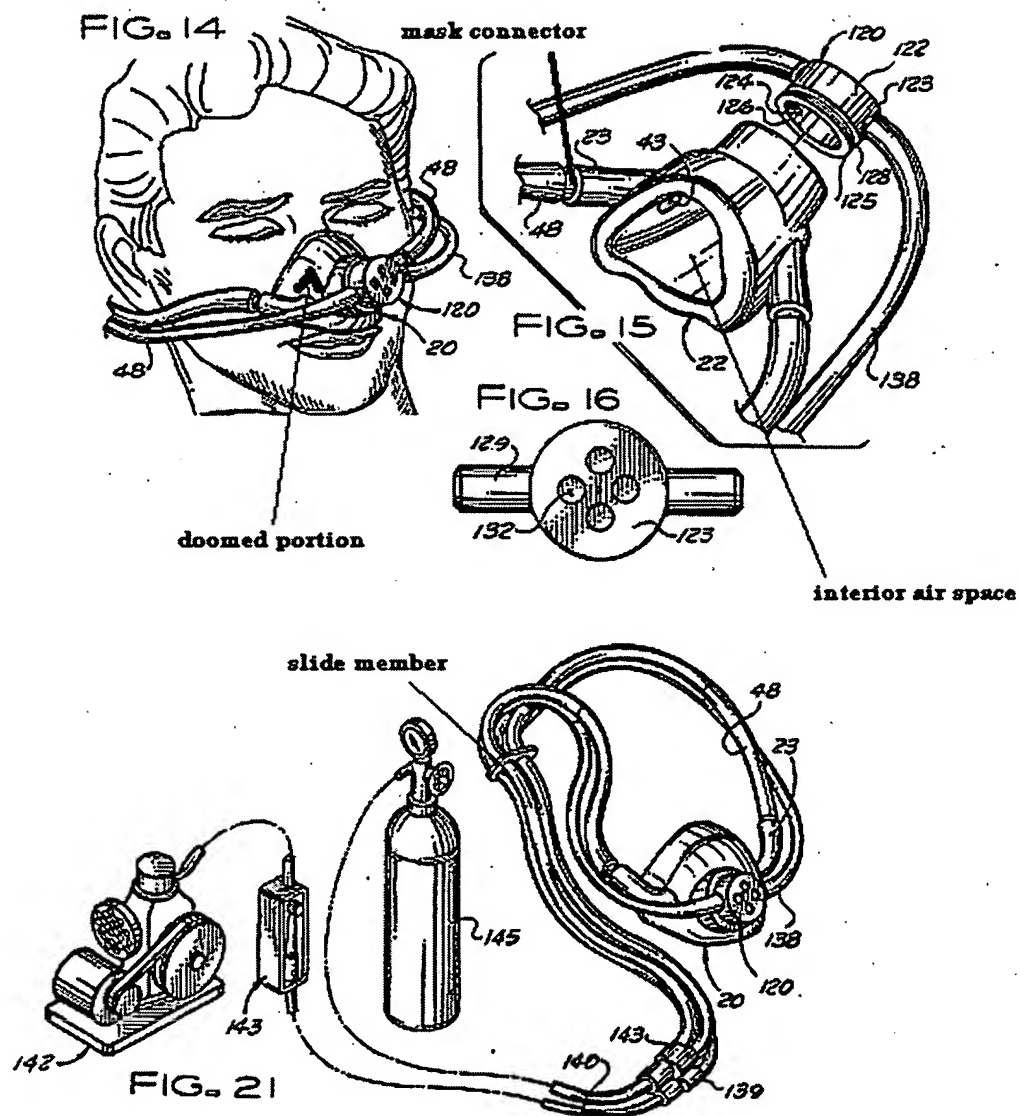
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 12/22/2006  
Shumaya B. Ali  
Examiner  
Art Unit 3771  
  
JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700  
12/26/06



**U.S. Patent**  
**5,419,317**



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*12/22/06*